

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL HOLLINGSWORTH,

Defendant-Appellant.

UNPUBLISHED

April 16, 2002

No. 230138

Wayne Circuit Court

LC No. 99-010643

Before: Zahra, P.J., and Neff and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to life imprisonment for the first-degree murder conviction, and sentenced him to a consecutive two-year term for the felony-firearm conviction. We affirm.

Defendant says he was denied his right to present a defense because the trial court failed to recite all relevant evidence regarding his intoxication. We disagree.

The trial court determined that defendant engaged in goal-directed behavior and had the specific intent to kill Lee. In reviewing the evidence, the trial court properly concluded:

The defendant showed the weapon to Mr. White at the house. The defendant indicated that he would “take care of the men who were in the basement.” The defendant took the gun, the weapon, out and pointed it at the foot and threatened Mr. White. The defendant also threatened Mr. White after the event occurred. The defendant also took his time, walked to the porch, shot the lights out on the porch, and then walked back to Mr. Lee and, in fact executed Mr. Lee.

Defendant’s argument that he was denied a defense because the trial court did not recite every fact regarding his intoxication is premised on flawed reasoning and an incorrect view of the law. Simply because the court did not recite all facts does not mean that the court forgot or failed to consider all relevant facts. The law does not require the trial court to regurgitate every fact presented during trial. The trial court made sagacious observations regarding the evidence of intoxication and defendant’s ability to form the intent to kill and we will not second guess the trial court, which had the ability and opportunity to observe the witnesses and assess their credibility.

Also, defendant argues that the trial court erred in failing to resolve the conflicting testimony of the prosecution's expert psychological witness. We disagree. "Findings of fact are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law." *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992).

Findings of fact are necessary to aid appellate review. *People v McKeever*, 123 Mich App 533, 536; 332 NW2d 596 (1983). A trial court's findings of fact should be "brief, definite, and pertinent, and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts." MCR 2.517(A)(2). A trial court's findings of fact "must cover the trial court's steps with the degree of specificity necessary to disclose the basis for each critical determination." *McKeever, supra*, 123 Mich App 536, citing *People v Jackson*, 63 Mich App 249, 254; 234 NW2d 471 (1975). Such specificity is present here.

Dr. Ronald Kolito, a clinical psychologist, explained that an alcoholic blackout could mean either that a person forgets what he did or that the person was so intoxicated that he was unaware of what was going on around him. Dr. Kolito further testified that a person can form the intent to kill and nevertheless have memory destroyed by use of alcohol or some traumatic incident.

After considering the evidence and the two types of alcoholic blackouts, the trial judge determined that defendant engaged in goal-directed behavior and had the intent to kill Lee. In its findings of fact, the trial court discussed Dr. Kolito's testimony regarding alcoholic blackouts. Specifically, the trial court reiterated that an alcoholic blackout may cause a lack of perception regarding what is happening or may cause trauma to the brain, resulting in a person's inability to remember what he had knowingly done. The trial court further acknowledged Dr. Kolito's opinion that one can act in a purposeful manner even when highly intoxicated. The trial court determined that defendant's behavior was goal directed, meaning that he acted in a purposeful manner. The trial court explained:

[T]he defendant's behavior appeared to be goal directed. That is, that when he – one shoots out the light, makes threats, order the defendant – other witnesses to drive, appeared to be goal directed behavior.

The trial court did not err in its factual findings regarding Dr. Kolito's testimony.

Defendant also claims that the prosecution presented insufficient evidence to support defendant's conviction for first-degree murder. We disagree. The prosecution must introduce sufficient evidence that would justify a rational trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). "This Court reviews sufficiency of the evidence claims by considering the evidence in the light most favorable to the prosecution and determining whether a rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt." *People v DeKorte*, 233 Mich App 564, 567; 593 NW2d 203 (1999).

The offense of premeditated first-degree murder is a specific intent crime, which requires proof that the defendant intended to kill. MCL 750.316(1)(a); *People v Herndon*, 246 Mich App 371, 386; 633 NW2d 376 (2001). "To prove first-degree premeditated murder, the prosecution must establish that the defendant intentionally killed the victim and that the act of killing was

premeditated and deliberate.” *People v Mette*, 243 Mich App 318, 330; 621 NW2d 713 (2000). Voluntary intoxication is a defense to a specific intent crime to the extent that such voluntary intoxication renders a defendant incapable of entertaining the specific intent to commit the offense. *People v Savoie*, 419 Mich 118, 134; 349 NW2d 139 (1984). The prosecutor presented sufficient evidence that defendant had the specific intent required for first-degree murder.

White testified that he saw Lee standing next to his car in the “holdup” position and that defendant was pointing his gun at Lee. When defendant’s friends, Jessie, Dave, and White, got into defendant’s car, Dave rolled down the window and shouted at defendant to “come on” and “let’s go.” However, defendant motioned the men to leave. White’s friend, Nissa, also testified that she went to get into her car after Jessie, Dave, and White left, and she saw defendant lean against Lee on his white Cadillac and whisper something in Lee’s ear. Further, Rhonda, the owner of the house in which defendant held Lee, testified that when she looked out her window it appeared that defendant was robbing Lee. Jessie drove the car back to Rhonda’s house shortly thereafter, and defendant still had Lee pinned up against the Cadillac, holding a gun to him, and Rhonda and Nissa were standing on the porch. Defendant then aimed the gun at the porch and pulled the trigger, shooting once at the house. Defendant walked up to the porch and shot the porch lights out. Defendant then walked over to Lee, raised the gun, and shot Lee in the neck. Defendant then re-cocked the gun, walked over to his car, got in the back seat next to White, and told Jessie to “drive.” Defendant then told Jessie to “drive faster.” Jessie drove White to his sister’s house and, while White was getting out of the car, defendant told him, “You are the only one that can f*** us up. If you say anything they’re going to charge you because you was [sic] with us. You are going to be charged with accessory.”

As noted above, Dr. Kolito testified that a person may suffer a blackout following the consumption of alcohol, and may forget his own actions because of brain trauma. White testified that he never saw defendant fall down or stumble, and that it did not appear that defendant failed to recognize what he was doing. Further, Rhonda testified that she saw defendant drink just one beer while he was at her house, and that defendant never seemed unaware of his surroundings. Thus, there was sufficient evidence to establish that defendant had the time and presence of mind to form the intent to murder Lee. Defendant held Lee at gunpoint for a significant period of time, shot out the porch lights so that it would be dark outside, and then proceeded to walk over to Lee, shoot, and kill him. Defendant then ordered Jessie to drive fast to flee the scene, and proceeded to threaten White by telling him that he would be deemed an accomplice if he told anyone. This evidence was clearly sufficient to convict defendant of first-degree murder.

Defendant further asserts that he received ineffective assistance of counsel at trial. We disagree. This issue was not preserved for appeal because defendant failed to move for a *Ginther*¹ hearing or a new trial. Accordingly, our review is limited to mistakes apparent on the record. *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001).

“Reversal of a conviction based on ineffective assistance of counsel requires a defendant to show, at minimum, (1) deficient performance by trial counsel and (2) a reasonable probability that but for the unprofessional conduct the result of the proceeding would have been different.”

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

People v Cooper, 236 Mich App 643, 656-657; 601 NW2d 409 (1999). “The defendant must also overcome the presumption that the challenged action might be considered sound trial strategy.” *Knapp, supra* at 385-386.

Defendant claims that trial counsel failed to call defendant’s mother and stepfather to testify regarding defendant’s alcohol problem and his previous blackouts. The decision whether to call witnesses is a matter of trial strategy. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Failure to call witnesses will only constitute ineffective assistance of counsel if the failure deprives the defendant of a substantial defense. *Id.* at 58.

The record reflects that, while defense counsel did not call defendant’s mother or stepfather, he instead chose to call Neomi Washington, defendant’s girlfriend, to testify regarding defendant’s history of alcohol abuse. Washington testified that defendant was drinking more than usual during the months prior to Lee’s death, and that she recalled him suffering blackouts. Washington further stated that, on one occasion, she found defendant urinating in the kitchen garbage can and that when she yelled at him, he did not even hear her. Accordingly, defense counsel established, through Washington, that defendant had a history of alcohol problems.

There is no indication that defendant’s mother or stepfather knew anything about defendant’s drinking problem or blackouts. Moreover, as discussed above, the critical issue is not whether defendant had a drinking problem but, on the night he killed Lee, whether defendant possessed the requisite intent to kill. Neither the mother nor the stepfather could testify to this critical issue because neither were present at the scene of the crime. Accordingly, defendant has failed to overcome the presumption that his counsel’s decision not to call those witnesses was sound trial strategy.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad